

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA**

In the Matter of the Decision of
the Agricultural Commissioner of
the County of Riverside
(County File No. 146-ACP-RIV-01/02)

Administrative Docket No.108

DECISION

**TUDOR RANCHES
P. O. Box 818
Mecca, California 92254**

Appellant /

Procedural Background

Under Food and Agricultural Code (FAC) section 12999.5 and section 6130 of Title 3, California Code of Regulations (3 CCR), county agricultural commissioners may levy a civil penalty up to \$1,000 for certain violations of California's pesticide laws and regulations.

After giving notice of the proposed action and providing a hearing, the Riverside County Agricultural Commissioner found that the appellant, Tudor Ranches, violated section 6614(b)(2) of Title 3 of the California Code of Regulations. The commissioner imposed a penalty of \$1,000 for the violation. The Hearing Officer reduced the amount of the penalty to \$401.

Tudor Ranches appealed from the commissioner's civil penalty decision to the Director of the Department of Pesticide Regulation. The Director has jurisdiction in the appeal under FAC section 12999.5.

Standard of Review

The Director decides matters of law using his independent judgment. Matters of law include the meaning and requirements of laws and regulations. For other matters, the Director decides them on the record before the Hearing Officer. In reviewing the record, the Director looks to see if there was substantial evidence, contradicted or uncontradicted, before the Hearing Officer to support the Hearing Officer's findings and the commissioner's decision. The Director notes that witnesses sometimes present contradictory testimony and information; however, issues of witness credibility are in the province of the Hearing Officer.

The substantial evidence test requires only enough relevant information and inferences from that information to support a conclusion, even though other conclusions might also have been reached. In making the substantial evidence determination, the Director draws all reasonable inferences from the information in the record to support the findings, and reviews the record in the light most favorable to the commissioner's decision. If the Director finds substantial evidence in the record to support the findings and decision, the Director affirms the decision.

Section 6614(b)(2)

Section 6614(b)(2) provides, in relevant part, that no pesticide application shall be made or continued when there is a reasonable possibility of damage to nontarget crops, animals, or other public or private property.

There is information in the record that Tudor Ranches applied the pesticide Dormex, E.P.A. No. 54555-2, to a vineyard directly north of a lemon orchard farmed by Venus Ranches on December 19, 2000. On December 25, 2000, Steve Hudson, manager of Venus Ranches, noticed leaf drop on the lemon trees along the north side of Venus Ranches' lemon orchard.

On December 28, 2000, Carolyn Brown and Charles Kregl, Agricultural Standards Investigators for the Riverside County Agricultural Commissioner's office, observed leaf drop from lemon trees in the first four rows on the northern edge of the lemon orchard. The damage appeared to be spread diagonally in a north-to-south pattern.

During the hearing on December 4, 2001, Carolyn Brown testified that the damage was indicative of Dormex exposure in that the petiole of the leaf was left behind when the leaf blade fell off the tree branch. She also testified that the source of the damage came from the north and moved directly south toward the lemon orchard. She further testified that damage caused by Dormex exposure manifests itself within five to seven days after a Dormex application.

Venus Ranches' lemon leaf drop damage that followed Tudor Ranches' Dormex application on December 19, 2000, manifested itself within this five to seven-day period, as Steve Hudson noticed the leaf drop on December 25, 2000. There is information in the record that lemon leaf loss results in an uneven crop and a lower quantity of fruit.

The Dormex label provides the following information under the section titled “Potential Crop Loss:”

When spraying close to susceptible crops such as lemons, crops in bloom, sensitive foliage, etc., a buffer zone is suggested to be used. Extreme care must be used to avoid contact of the spray or drift with foliage, green stems, or fruit of desired crops since severe damage and crop loss may result.

There is information in the record that Tudor Ranches did not use an untreated area buffer zone within the vineyard even though Tudor Ranches was applying Dormex close to sensitive foliage of the lemon orchard.

Reasonable inferences from the information in the record are that Tudor Ranches did not use the extreme care required by the Dormex label to avoid contact of the Dormex spray or drift with foliage of the desired lemon crop, and that Tudor Ranches’ Dormex application was made when there was a reasonable possibility of damage to nontarget crops/nontarget private property (i.e., lemon leaves [foliage]/lemon orchard/lemons).

Was the Violation a Serious Violation?

In relevant part, section 6130 of 3 CCR provides that serious violations are repeat moderate violations, or violations which created an actual health or environmental hazard.

In order for a violation to be classified as a serious violation under 3 CCR section 6130, where the county does not produce evidence that the violation at issue is not a repeat moderate violation, the violation must have created an actual health or environmental hazard. According to Merriam Webster’s Collegiate Dictionary, Tenth Edition, a hazard is a “source of danger.”

While an actual environmental effect may support a finding that the violation created an actual environmental hazard (source of danger), it is not required that an actual environmental effect occur in order for a violation to be classified as serious. Here, the Hearing Officer found that damage occurred to the lemon trees in the first three rows on the northern most edge of the orchard.

On January 16, 2001, Venus Ranches filed a Report of Loss, Non Performance, or Damage with the County Agricultural Commissioner. This report describes the damage as “heavy tree defoliation due to Dormex damage.” There is information in the record that lemon leaf loss results in an uneven crop and a lower quantity of fruit.

A reasonable inference from the information in the record is that the violation not only created an actual source of danger to the lemon trees, but also created an actual environmental effect (defoliation of lemon trees). The violation was properly classified as a serious violation.

Conclusion

The record shows the commissioner's decision is supported by substantial evidence, and there is no cause to reverse or modify the decision.

Disposition

The Appellant's request for oral argument is denied.

The commissioner's decision is affirmed. The commissioner shall notify the appellant how and when to pay the \$401 penalty for its violation of 3 CCR section 6614(b)(2).

Judicial Review

Under FAC section 12999.5, the appellant may seek court review of the Director's decision within 30 days of the date of the decision. The appellant must bring the action under Code of Civil Procedure section 1094.5.

STATE OF CALIFORNIA
DEPARTMENT OF PESTICIDE REGULATION

By: Original Signed by
Paul E. Helliker
Director

Dated: June 12, 2002